



***Town of Tyngsborough***  
*Zoning Board of Appeals*  
Town Hall-25 Bryants Lane  
Tyngsborough, MA 01879-1003  
(978) 649-2300, Ext. 115

**TYNGSBOROUGH ZONING BOARD OF APPEALS MINUTES**  
**January 12, 2012**  
**APPROVED**

Attachments:

1. Meeting Agenda
2. 46 Mission Rd. Application for a Variance & Special Permit – 12/15/11

Members Present: Robb Kydd, Chairman  
Chris Mechalides, Vice Chairman  
Claire Cloutier  
Cheryl Bradley  
Joseph Polin

Members Absent: Scott Bordeleau

**6:30pm** Meeting was called to order by Chairman R. Kydd

**Public Hearing #1**

**MICHAEL CLEMENT & SHANNON NASH – 46 MISSION RD.** – Assessor Map 29, Lot 55; Request for a VARIANCE from the requirements of Section 2.12.50 of the Tyngsborough Zoning By-Law for square footage and frontage, and a SPECIAL PERMIT under Section 2.15.22 & 2.15.24 to tear down old house and build a new house. Placement is less non-conforming. All set backs under current zoning will be met in an R-1 Zone. *Advertised in the Lowell Sun Thursday December 29, 2011 and Thursday January 5, 2012.*

**Abutters List Present and Complete**

**J. Polin:** Motion to waive the reading of the Abutters List

**C. Bradley:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

Application Presentation by Applicant/Designee:

Atty. Peter Nicosia appeared before the Board representing the applicants. Atty. Nicosia explained that Mr. Clement and Ms. Nash were issued a building permit in 2009 by then Building Inspector Mark Dupell. Mr. Dupell's ruling at the time was based on his opinion that the house was a pre-existing non-conforming structure and upon completion would meet the setback requirements for the lot, therefore, he did not require filing with the ZBA. Atty. Nicosia went on to say that during the next two years, a new building inspector took over for Mark Dupell and had issued a stop work order for the house until the proper ZBA permission was obtained, arguing that any mention of non-conformity must go before the ZBA for a Variance and/or Special Permit.

The hardship was created by the Town due to the unfortunate misinformation provided to the applicants by the previous building inspector. It should be noted that the new home was relocated on the lot from the original location which has improved the non-conformity and meets all the lot setback for and R-1 Zone.

Open Discussion by the Board and Q&A to Applicant with Applicant responses

There were two abutters who spoke in favor of the project stating their discontent with the varying opinions from three different building inspectors. They had concerns with the access to Hamblet Ave. The Board's review of the plans showed no access infringement on Hamblet Ave. Citizen Allen Curseadan spoke in favor of granting relief for the same reasons.

- C. Mechalides explained that the Board received a statement from the previous building inspector Mark Dupell where he believed that his interpretation of the bylaw was correct at the time and that is why he issued the building permit. She went on to say that it wasn't until after the house was built that it was noticed that the project should have come before the ZBA for a Variance and Special Permit for the increase in height. The Board discussed their concerns with Mr. Dupell's ruling and how it affects the Town going forward. Most notably the fact that it was not correct and it could negatively impact the Town going forward.
- C. Cloutier noted that it was under the advice of Town Counsel that they required the applicant to apply with ZBA with the intention of correcting a wrong and avoid setting a bad precedent.
- They do, however, understand the applicant's hardship and believe that the home does fit in with the design nature of the surrounding neighborhood and is not detrimental.

**C. Bradley:** Motion to close the public portion of the hearing

**J. Polin:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

Review Notes/Comments on Application from other Tyngsborough Departments

Building Commissioner: None

Planning Board: None

Board of Health: None

Fire Dept.: None

Conservation Commission: None

Sewer Dept.: None

Highway Dept.: None

Other (if applicable): None

**J. Polin:** Motion to grant a Special Permit for 46 Mission Rd.

**C. Bradley:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes Unanimous: 5-0**

**J. Polin:** Motion to grant a Variance for 46 Mission Rd.

**C. Bradley:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes Unanimous: 5-0**

**Special Note:** The Building Inspector's Cease & Desist Order shall be lifted in lieu of the approved variance and special permit; therefore building can resume.

**Motion written as follows:**

**MICHAEL CLEMENT & SHANNON NASH – 46 MISSION RD. – Assessor Map 29, Lot 55;** Motion to grant a Special Permit under Section 2.15.22 and Section 2.15.24 of the Tyngsborough Zoning Bylaw to tear down old house and build a new house. With the following conditions: A temporary Certificate of Occupancy will be issued for 45 days only at which time the old house will be demolished and removed and a permanent Certificate of Occupancy can be issued. Placement is less non-conforming. All set backs under current zoning will be met in an R-1 Zone; and to grant a VARIANCE from the requirements of Section 2.12.50 of the Tyngsborough Zoning By-Law for square footage from 65,000s.f. to 21,686 +/-, and the frontage from 200 ft. to 148 ft. +/-.

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## **OTHER BUSINESS**

1. 40B's – Allen Curseadan.

Selectman and Sewer Superintendent Allen Curseadan briefed the Board on a couple of complaints that have come in to the Sewer Department regarding odor and repairs at the Maple Ridge 40B project. It was Selectman Curseadan's understanding that the 40B projects themselves were to handle all sewer related issues through the Homeowner's Association, and Mr. Curseadan wanted clarification on that issue. In addition, Mr. Curseadan inquired about the protocol for ensuring that the developers of the Town's 40B projects are in compliance with their prospective Comprehensive Permits. He went on to ask if there are any reporting requirements and who is responsible for overseeing that the projects have established the proper Homeowners Associations. As far as ZBA understood, the developer is responsible for establishing the Homeowners Associations and to handle all aspects of the sewer system on the properties.

Mr. Curseadan suggested, and the Board agreed, that a status report on each 40B project in Town be requested. Therefore, the Board requested that letters be sent to the developers of all four 40B projects in Town and request the following: a status report of each project's Homeowners Association, contact information for those associations, and a copy of each association's charter.

2. Request for Comments forms from the Planning Board were reviewed.

## **ADMINISTRATIVE**

1. Minutes: No minutes were ready for approval at this time.
2. Next meeting is scheduled for: February 9, 2012

**8:12pm**

**C. Bradley:** Motion to adjourn

**C. Cloutier:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

Minutes respectfully submitted by  
Pamela Berman, ZBA Administrative Assistant